

Remarks

The Office Action mailed May 16, 2006 has been received and reviewed. Claims 1-12, 14-18, and 20-26 are pending in the application. Claims 1-4, 8-12, 14-18, and 20-25 were previously withdrawn. Claims 5-7, and 26 are currently under consideration, each standing rejected. Claim 5 has been amended without prejudice or disclaimer. Reconsideration is respectfully request.

Support for claim amendment

Support for claim 5 can be found throughout the specification, for example, in paragraph [0013] of the specification. No new matter has been added.

Claim rejections

Claims 5-7, and 16 were rejected under 35 U.S.C. § 102(b) as allegedly being anticipated by Noteborn et al. (WO9503414). Applicants respectfully traverse the rejections.

Claim 5 recites a vector comprising a nucleic acid encoding a mimic of Apoptin phosphorylated at amino acid position 108 of SEQ ID NO: 1 or a fragment thereof. Noteborn et al. does not disclose a phosphorylated Apoptin. Therefore, Noteborn et al. does not disclose all elements of claim 5.

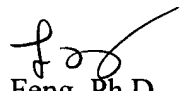
Each of claims 6 and 7 is not anticipated by Noteborn et al. for, *inter alia*, depending from claim 1, which is not anticipated.

Claim 26 recites a vector comprising a nucleic acid encoding Apoptin of SEQ ID NO: 1, a functional equivalent or a functional fragment thereof. It is admitted in the Office Action that SEQ ID NO: 1 (with an arginine at position 116) differs from the nucleic acid sequence (with a lysine at position 116) in FIG. 3 of Noteborn et al. by one amino acid. The Office Action contends that since the difference is a conservative change, a functional equivalent of SEQ ID NO: 1 would encompass the nucleic acid sequence of Noteborn et al. However, claim 26 specifically points out that “the functional equivalent comprises replacement of at least one threonine residue located at amino acid position 106, 107, or 108 of SEQ ID NO:1 with a glutamic acid to mimic constitutive phosphorylation”. Noteborn et al. discloses neither a phosphorylated Apoptin nor a functional equivalent that mimics a phosphorylated Apoptin. As

such, claim 26 is not anticipated by Noteborn et al.

In view of the amendment and foregoing discussions, withdrawal of the rejections is respectfully requested. If questions should remain after consideration of the foregoing, the Examiner is kindly requested to contact applicants' agent at the address or telephone number given herein.

Respectfully submitted,



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Enclosure: Petition for extension of time
Check No. 10128 in the amount of \$120